



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2019-0144; FRL-9992-63-Region 3]

#### **Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Removal of Allegheny County Requirements Applicable to Motor Gasoline Volatility in the Allegheny County Portion of the Pittsburgh-Beaver Valley Area**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania, on behalf of the Allegheny County Health Department (ACHD), on March 19, 2019. This revision seeks removal from the Pennsylvania SIP of Allegheny County requirements limiting summertime gasoline volatility to 7.8 pounds per square inch (psi) Reid Vapor Pressure (RVP), which were originally adopted to reduce ozone precursor pollution to address nonattainment of the 1-hour ozone national ambient air quality standard (NAAQS) in the Allegheny County portion of the Pittsburgh-Beaver Valley ozone nonattainment area (hereafter referred to as the Pittsburgh-Beaver Valley Area). In December 2018, EPA issued a final approval of the Pennsylvania Department of Environmental Protection's (PA DEP) request to remove from the SIP the PA DEP requirements limiting the summer RVP of gasoline in the Pittsburgh-Beaver Valley Area. As part of that action, EPA also approved the accompanying demonstration prepared by Pennsylvania that shows that the emission impacts from removal of the program will not interfere with the area's ability to attain or maintain any NAAQS. EPA is proposing that this prior approved noninterference demonstration also serves to support Pennsylvania's request to remove the separate program imposed by Allegheny County requiring summer 7.8 psi RVP

gasoline and that removal of this substantially similar, local low-RVP program will not interfere with the area's ability to attain or maintain the NAAQS. This action is being taken under the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2019-0144 to <http://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the "For Further Information Contact" section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Brian Rehn, Planning and Implementation Branch (3AD30), Air and Radiation Division, U.S. Environmental Protection Agency, Region 3, 1650 Arch Street, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814-2176. Mr. Rehn can also be reached via electronic mail at [rehn.brian@epa.gov](mailto:rehn.brian@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document whenever “we,” “us,” or “our” is used, we refer to EPA. This supplementary information section of this action is arranged as follows:

**I. Background**

**A. Federal Gasoline Volatility Controls Under the CAA**

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**I. Background**

**A. Federal Gasoline Volatility Controls Under the CAA**

Under section 211(c) of the CAA, EPA promulgated regulations on March 22, 1989 (54 FR 11868) that set maximum Federal limits for the RVP of gasoline sold during regulatory control periods that were established on a state-by-state basis in the final rule. The regulatory control periods applied during the summer months when peak ozone concentrations were expected. That rule, referred to as Federal Phase I RVP standards, constituted the first phase of a two-phase nationwide program that was designed to reduce the volatility of commercial gasoline during the high ozone season. Depending on the state and month, Federal Phase I gasoline RVP was not to exceed 10.5 psi, 9.5 psi, or 9.0 psi between calendar years 1989 through 1991. On June 11, 1990 (55 FR 23658), EPA promulgated more stringent Phase II Federal gasoline volatility standards. These requirements established maximum RVP standards of 9.0 psi or 7.8 psi, depending on the state location and the area's initial ozone attainment designation with respect to the 1-hour ozone NAAQS. Phase II was applicable starting in 1992 and remains in effect, except in areas that have more stringent SIP-approved RVP control programs in place. These Federal volatility regulations are codified at 40 CFR 80.27, with the delineation between areas designated as Federal 9.0 psi RVP volatility attainment areas codified at 40 CFR 80.27(a)(2)(i), and those areas designated as Federal 7.8 psi RVP volatility nonattainment areas at 40 CFR 80.27(a)(2)(ii).

The 1990 amendments to the CAA established a new section, 211(h), to address fuel volatility. Section 211(h)(1) requires EPA to promulgate regulations making it unlawful to sell, offer for sale, dispense, supply, offer for supply, transport, or introduce into commerce gasoline with an RVP level in excess of 9.0 psi during the high ozone season. Section 211(h)(2) prohibits EPA from establishing a volatility standard more stringent than 9.0 psi in an attainment area, except that the Agency may impose a lower (more stringent) standard in any former ozone nonattainment area redesignated to attainment.

Under Federal Phase II gasoline volatility requirements, which were promulgated December 12, 1991 (56 FR 64704), EPA modified the Phase II volatility regulations to make them consistent with section 211(h). The modified regulations prohibited the sale of gasoline, beginning in 1992, with RVP above 9.0 psi in all areas designated attainment for ozone. Under the revised Phase II standards published on June 11, 1990 (55 FR 23658), areas are subject to either a 9.0 psi RVP standard, or to a newly added 7.8 psi ozone season limitation applicable to some states.

Under these Federal Phase II RVP requirements, the Commonwealth of Pennsylvania was required to meet a Federal 9.0 psi RVP standard during the summer RVP control period -- except for the Philadelphia Area, which was at that time was designated as severe ozone nonattainment and as such was subject to more stringent gasoline requirements of the reformulated gasoline program established under CAA section 211(k).

However, Pennsylvania and Allegheny County were later granted a Federal “preemption waiver” under authority of CAA section 211(c)(4)(C), which allows a state to adopt their own more stringent, state-specific fuel program (or “boutique” fuel program) as part of the Federally-approved SIP. It was this Federal fuel preemption waiver that enabled Pennsylvania (and Allegheny County) to adopt a more stringent gasoline volatility program in the Pittsburgh-Beaver Valley area, as described in more detail in this rulemaking action.

## **B. History of State and Local Gasoline Volatility Controls Applicable to the Pittsburgh-Beaver Valley Area.**

On November 15, 1990, the CAA amendments of 1990 were signed into law. On November 6, 1991, EPA designated and classified the Pittsburgh-Beaver Valley Area as moderate nonattainment for the 1979 1-hour ozone NAAQS, which included: Allegheny, Armstrong,

Beaver, Butler, Fayette, Washington, and Westmoreland Counties. As one of a number of measures aimed to bring the Pittsburgh-Beaver Valley Area into ozone attainment, Pennsylvania adopted (among other measures) gasoline RVP limits, through separate but substantially similar PA DEP and ACHD rules limiting summertime gasoline volatility in the Pittsburgh-Beaver Valley Area to 7.8 psi RVP. PA DEP initially adopted a gasoline RVP limit rule in the November 1, 1997 *Pennsylvania Bulletin* (27 Pa.B. 5601, effective November 1, 1997), which is codified in Subchapter C of Chapter 126 of the Pennsylvania Code of Regulations (25 Pa. Code Chapter 126, Subchapter C). On April 17, 1998, Pennsylvania submitted this state-adopted rule to EPA as a formal revision to its approved SIP. EPA approved Pennsylvania's RVP SIP revision in the June 8, 1998 **Federal Register** (63 FR 31116) and codified in the *Code of Federal Regulations* at 40 CFR 52.2020(c)(1).

As the local air pollution control agency for Allegheny County, the ACHD subsequently adopted a substantially similar summertime gasoline volatility limit rule (Allegheny County Order No. 16782, Article XXI, sections 2102.40, 2105.90, and 2107.15; effective May 15, 1998, amended August 12, 1999). On March 23, 2000, PA DEP formally submitted a SIP revision to EPA (on behalf of ACHD) to incorporate ACHD's gasoline RVP summertime requirements identified above into the Pennsylvania SIP. EPA approved that SIP revision, establishing an independent ACHD gasoline RVP limit, on April 17, 2001 (66 FR 19724), effective June 18, 2001.

PA DEP amended its RVP limit rule in April 2017 to suspend summertime gasoline RVP limits, formerly applicable to all seven counties in the Pittsburgh-Beaver Valley Area.<sup>1</sup> ACHD

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<sup>1</sup> See Pa Code, Title 26, Chapter 126, Subchapter C (relating to motor vehicle and fuels programs, gasoline volatility requirements), effective January 22, 2019. (Pa Bulletin, Vol. 48, No. 14; April 7, 2018). This rule amended § 126.301 (relating to compliant fuel requirement) to make Chapter 126, Subchapter C no longer applicable to the Pittsburgh-Beaver Valley Area upon the effective date of approval by EPA of the removal of Chapter 126, Subchapter C as a Federally-enforceable control measure in the Commonwealth's SIP. EPA approved Pennsylvania's SIP request to remove the PA DEP RVP requirements of Chapter 126 in a final rule published December 20, 2018 (83 FR 65301).

subsequently revised its own RVP limit rule (Article XXI, §§2105.90, and 2107.15 of the Rules and Regulations of the Allegheny County Health Department; amended February 21, 2019, effective March 3, 2019), suspending applicability of ACHD's RVP requirements upon the effective date of EPA's removal of the revised Article XXI sections from the Allegheny County portion of the Pennsylvania SIP. On March 19, 2019, PA DEP submitted this SIP revision (on behalf of ACHD) to EPA to request removal of the ACHD's RVP rule requirements from the Pennsylvania SIP. This request to remove the ACHD RVP program requirements from the SIP is the subject of EPA's current rulemaking action.

## **II. What Prompted ACHD to Suspend Locally Adopted Gasoline Volatility Requirements Applicable to Allegheny County?**

### **A. Pennsylvania Legislature Directs PA DEP to Suspend State Gasoline Volatility Controls Applicable to the Pittsburgh-Beaver Valley Area**

In the 2013-14 session, the Pennsylvania General Assembly passed, and Governor Corbett signed into law, Act 50 (P.L. 674, No. 50 of May 14, 2014), that amended the Pennsylvania Air Pollution Control Act to direct PA DEP to initiate a process to repeal PA DEP's Pittsburgh-Beaver Valley Area gasoline RVP requirements. That process culminated with PA DEP's submission on May 2, 2018 of a SIP revision requesting that EPA remove from the Pennsylvania portion of the SIP the Pa. Code RVP provisions of Chapter 126, Subchapter C gasoline RVP limits and also approve PA DEP's CAA 110(l)-required noninterference demonstration showing that repeal of PA DEP's RVP requirements would not interfere with the Pittsburgh-Beaver Valley Area's attainment of any NAAQS. Pennsylvania's analysis showed that the emissions impact from repeal of the 7.8 psi RVP summer limit (to be replaced by the Federal 9.0 psi summertime gasoline RVP requirement) would be fully offset through substitution of

commensurate benefits from another enacted emission reduction measure reducing emissions from area sources in the Pittsburgh-Beaver Valley Area, as well as reductions from permanent shutdown of a glass manufacturing facility in Allegheny County. For further information on the Commonwealth's supporting demonstration showing removal of the RVP program from the Pittsburgh-Beaver Valley Area will not interfere with the area's ability to meet Federal NAAQS, as well as EPA's analysis of that demonstration, please refer to EPA's December 20, 2018 (83 FR 65301) final rule approving Pennsylvania's removal of PA DEP's Chapter 126 low-RVP program from the seven counties comprising the Pittsburgh-Beaver Valley Area and the docket for that action.

**B. ACHD Amendment of Allegheny County Gasoline Volatility Requirements Rule to Suspend Local RVP Requirements Applicable to Allegheny County.**

ACHD subsequently revised its own RVP limit rule (Article XXI, §§2105.90, and 2107.15 of the Rules and Regulations of the Allegheny County Health Department; amended February 21, 2019, effective March 3, 2019), suspending applicability of ACHD's gasoline RVP requirements upon the effective date of EPA's removal of the revised Article XXI sections from the Allegheny County portion of the Pennsylvania SIP.

The revised ACHD gasoline volatility regulation contains an added provision suspending the requirements that ban the sale or transfer of gasoline in Allegheny County non-compliant with a 7.8 psi RVP limit (between May 1 through September 15). Per ACHD's revised rule (as amended February 21, 2019), the County's 7.8 psi summer limit and related requirements (at Article XXI, §§2105.90 and 2107.15) will no longer be applicable upon the effective date of EPA's final action approving removal of the RVP program from the Allegheny County portion of the Pennsylvania SIP. Upon the effective date of EPA final action to approve the



Commonwealth's request to remove the Allegheny County 7.8 psi RVP program requirements from the SIP, all state and local RVP limits for the Pittsburgh-Beaver Valley would be rescinded, reverting the entire Pittsburgh-Beaver Valley Area to the applicable Federal Phase II RVP requirements.<sup>2</sup>

### **III. What is the Historic Reason for Adoption of Gasoline Volatility Control and the Status of Air Quality in the Pittsburgh-Beaver Valley Area?**

The gasoline volatility limit was originally adopted by Pennsylvania as part of a suite of measures to address ground level ozone pollution in the Pittsburgh-Beaver Valley Area, which has historically been designated nonattainment for the ozone NAAQS. Since passage of the CAA in 1990, portions of the Pittsburgh-Beaver Valley Area have also been designated nonattainment for the daily and annual averaging period fine particulate matter (PM<sub>2.5</sub>) NAAQS. Since the low-RVP gasoline program affects primarily volatile organic compounds (VOCs) and nitrogen oxides (NO<sub>x</sub>) emissions, and to some degree directly emitted PM<sub>2.5</sub> emissions, our consideration of the impact of removal of this rule on air quality focuses primarily on those NAAQS to which emission from this program contribute (either directly or as NAAQS precursor emissions).

#### **A. The Status of the Pittsburgh-Beaver Valley Area with Respect to the Ozone NAAQS**

On November 6, 1991 (56 FR 56694), EPA designated and classified the Pittsburgh counties of Allegheny, Armstrong, Beaver, Butler, Fayette, Washington, and Westmoreland Counties as nonattainment for the 1-hour ozone NAAQS promulgated by EPA in 1979. On April 9, 2001,

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<sup>2</sup> See EPA's Phase II Volatility Regulations published June 11, 1990 (55 FR 23658), as amended December 12, 1991 (56 FR 64704). EPA amended Federal Phase II volatility regulations to make them consistent with CAA section 211(h), prohibiting the sale of gasoline (beginning in 1992) with RVP above 9.0 psi in all areas designated attainment for ozone. For areas designated nonattainment, the regulations retained the original Phase II standards established by the June 1990 Phase II rule.

Pennsylvania submitted a request to redesignate the Pittsburgh-Beaver Valley Area to attainment of the 1979 1-hour ozone NAAQS, along with a maintenance plan to demonstrate that the area would continue to attain for a 10-year period – a plan which relied, in part, on emissions reductions attributable to the 7.8 psi RVP summertime gasoline volatility control program. Subsequently, EPA determined that the Pittsburgh-Beaver Valley Area had attained the 1979 1-hour ozone NAAQS by its extended attainment date and approved the Commonwealth's 1-hour redesignation request and maintenance plan SIP revision on November 19, 2001 (66 FR 53094).

On July 18, 1997 (62 FR 38856), EPA issued a revised NAAQS for ozone, strengthening the primary and secondary standards to 0.080 parts per million (ppm) and changing the averaging time from 1-hour to 8-hours. In May of 2012, EPA classified the Pittsburgh-Beaver Valley Area as moderate nonattainment under section 181 of the CAA.<sup>3</sup> On April 4, 2013, EPA determined that the Pittsburgh-Beaver Valley Area had attained the 1997 8-hour ozone NAAQS by its applicable attainment date (based on air monitoring data for the 2007-2009 period) and warranted a clean data determination. This latter determination suspended certain CAA planning requirements for the Area, including requirements for an attainment demonstration, associated reasonable further progress plan, contingency measures, reasonably available control measure (RACM) analysis, and other CAA part D planning requirements for moderate ozone nonattainment areas, for as long as the area continued to monitor attainment of the NAAQS.

On March 27, 2008 (73 FR 16436), EPA strengthened the 8-hour NAAQS from 0.080 to 0.075

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<sup>3</sup> In 2012, EPA finalized revisions to the 2004 Phase I Implementation Rule for the 1997 8-hour ozone NAAQS that specified requirements to meet the 1997 ozone NAAQS. (77 FR 28424, May 14, 2012). The revisions were EPA's response to a December 22, 2006 decision in *South Coast Air Quality Management District v. EPA*, 472 F.3d 882 (D.C. Cir. 2006), directing EPA to classify areas under Part D of the CAA. As a result, EPA reclassified the former subpart 1 nonattainment areas, like the Pittsburgh Beaver Valley Area, under subpart 2. The 1997 8-Hour Ozone NAAQS was eventually revoked on April 6, 2015.

ppm. On May 21, 2012 (77 FR 30088), EPA designated and classified the Pittsburgh-Beaver Valley Area as marginal nonattainment for the 2008 8-hour ozone NAAQS. On March 6, 2015 (80 FR 12264), EPA published its ozone implementation rule for the 2008 ozone NAAQS, which established the date of July 20, 2016 as the deadline for marginal areas to attain the 2008 8-hour ozone NAAQS. On December 6, 2016 (81 FR 87819), EPA determined that the Pittsburgh-Beaver Valley Area had attained the 2008 ozone NAAQS by that July 20, 2016 deadline.<sup>4</sup> The Pittsburgh-Beaver Valley Area continues to attain the 2008 ozone NAAQS for the most recent 2016-2018 three-year monitoring period.

On October 1, 2015 (80 FR 65291), EPA promulgated a revised ozone NAAQS of 0.070 ppm. On November 6, 2017 (82 FR 54232), EPA issued final 2015 ozone NAAQS designations for most U.S. counties, designating all seven Pittsburgh-Beaver Valley Area counties as “attainment/unclassifiable.”

Pennsylvania’s April 19, 2019 SIP submittal for removal of the RVP program in Allegheny County relies upon a demonstration of noninterference, per the requirements of CAA section 110(l), that was originally submitted by PA DEP as part of its May 2, 2018 SIP revision for removal of the state RVP program in the larger Pittsburgh-Beaver Valley Area – a substantially similar state RVP requirements rule that geographically overlaps Allegheny County’s rule. EPA approved Pennsylvania’s May 2, 2018 SIP noninterference demonstration as part of our

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<sup>4</sup> On February 16, 2018, the D.C. Circuit Court issued an opinion on the EPA’s regulations implementing the 2008 ozone NAAQS, known as the 2008 Ozone SIP Requirements Rule. *South Coast Air Quality Mgmt. Dist. v. EPA*, No. 15-1115 (D.C. Cir. Feb. 16, 2018). The D.C. Circuit Court found certain provisions from the 2008 Ozone SIP Requirements rule unreasonable including EPA’s provision for a “redesignation substitute.” The D.C. Circuit Court vacated these provisions and found redesignations must comply with all required elements in CAA section 107(d)(3) and thus found the “redesignation substitute” which did not require all items in CAA section 107(d)(3)(E) violated the CAA and was thus unreasonable. The D.C. Circuit Court also vacated other provisions relating to anti-backsliding in the 2008 Ozone SIP Requirements Rule as the Court found them unreasonable. *Id.* The D.C. Circuit Court found other parts of the 2008 Ozone SIP Requirements Rule unrelated to anti-backsliding and this action reasonable and denied the petition for appeal on those. *Id.*

December 20, 2018 approval of that SIP revision (83 FR 65301). This SIP-approved 110(l) demonstration includes EPA updated photochemical grid modeling results for the 2008 ozone NAAQS (*See* Appendix H of Pennsylvania's May 2, 2018 SIP revision, which is also appended for reference as Appendix H to the March 19, 2019 SIP requesting removal of Allegheny County's RVP program), based on updated electric generating unit data for 2017.<sup>5</sup> This forecast data predicts that the Pittsburgh-Beaver Valley Area will continue to attain the 2008 ozone NAAQS and will remain in attainment of the 2015 ozone NAAQS by 2023.

#### **B. The Status of the Pittsburgh-Beaver Valley Area with Respect to the Fine Particulate Matter NAAQS**

On October 17, 2006, EPA published a revised 24-hour PM<sub>2.5</sub> NAAQS (71 FR 61144). On November 3, 2009, EPA designated the Pittsburgh-Beaver Valley Area as nonattainment for the 2006 PM<sub>2.5</sub> NAAQS (74 FR 58688) under CAA part D, subpart 1. On June 2, 2014, EPA reclassified the Pittsburgh-Beaver Valley Area as moderate nonattainment under CAA part D, subpart 4 (79 FR 31566), including all of Beaver, Butler, Washington, and Westmoreland Counties and portions of Allegheny, Armstrong, Greene, and Lawrence Counties. On May 2, 2014, EPA determined that the Pittsburgh-Beaver Valley Area was in attainment of the 2006 annual and 24-hour PM<sub>2.5</sub> NAAQS based on 2010-2012 ambient monitoring data (79 FR 25014). On October 2, 2015 (80 FR 59624), EPA approved a request from Pennsylvania to redesignate the Pittsburgh-Beaver County Area to attainment of the 1997 annual and 2006 24-hour PM<sub>2.5</sub> NAAQS.

On January 15, 2013, EPA published revised annual and 24-hour PM<sub>2.5</sub> NAAQS (78 FR 3086).

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<sup>5</sup> EPA Projected 2023 Ozone Design Values for the Pittsburgh – Beaver Valley Area  
Source: Notice of Availability - Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone NAAQS. Data Spreadsheet is available at: [https://www.epa.gov/sites/production/files/2016-12/2015\\_o3\\_naaqs\\_preliminary\\_transport\\_assessment\\_design\\_values\\_contributions.xlsx](https://www.epa.gov/sites/production/files/2016-12/2015_o3_naaqs_preliminary_transport_assessment_design_values_contributions.xlsx).

On April 7, 2015, EPA designated Allegheny County as moderate nonattainment of the 2012 annual PM<sub>2.5</sub> NAAQS (80 FR 18535).<sup>6</sup> Allegheny County continues to be nonattainment for the 2012 annual PM<sub>2.5</sub> NAAQS.

#### **IV. What is EPA's Analysis of the Commonwealth's Submittal?**

State/local control of motor gasoline is preempted by CAA section 211(c)(4)(A), except in cases where EPA has granted a preemption waiver under 211(c)(4)(B) or (C) as part of a SIP approval. As such a SIP-approved, Federally preempted CAA 211(c)(4) "boutique fuel" program, Allegheny County's RVP control program is not a mandatory measure required to address nonattainment under Part D of Subchapter 1 of the CAA. Nor are boutique fuels subject to "anti-backsliding" as it relates to a revoked NAAQS (e.g., the 1979 1-hour or 1997 ozone NAAQS) in the case where EPA adopts a more stringent NAAQS (e.g., the 2015 ozone NAAQS), since state/locally-adopted boutique fuels are not an "applicable requirement" that must be retained as a SIP obligation (in certain situations) where a NAAQS has been revoked by EPA.<sup>7</sup> Nor does section CAA section 193, applicable to pre-1990 implemented or required rules, apply because this boutique fuel rule was neither required or enacted prior to that date.

Therefore, EPA's primary consideration for determining the approvability of Pennsylvania's request to rescind the requirements for a gasoline volatility control program is whether this requested action complies with section 110 of the CAA, specifically section 110(l).<sup>8</sup> Section 110(l) of the CAA requires that a revision to the SIP not interfere with any applicable

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<sup>6</sup> This action corrects an initial final designations action for the 2012 PM<sub>2.5</sub> NAAQS, which was signed by EPA on December 18, 2014 and published January 15, 2015 (80 FR 2206). This correction included more recently available data for use in designating certain areas of the country.

<sup>7</sup> For instance, in the case of the 2008 Ozone Implementation Rule (40 CFR Part 51, Subpart AA), applicable requirements for purposes of anti-backsliding are defined at 40 CFR 51.1100(o).

<sup>8</sup> CAA section 193, with respect to removal of requirements in place prior to enactment of the 1990 CAA Amendments, is not relevant because Pennsylvania's RVP control requirements in the Pittsburgh-Beaver Valley Area were not included in the SIP prior to enactment of the 1990 CAA amendments.

requirement concerning attainment and reasonable further progress (as defined in section 171), or any other applicable requirement of the CAA. EPA evaluates each SIP revision for CAA 110(l) noninterference compliance on an individual basis. EPA interprets CAA section 110(l) as applying to all NAAQS that are in effect, including those that have been promulgated, but for which EPA has not yet made designations.

In the absence of an attainment demonstration that shows no interference with any applicable NAAQS or requirement of the CAA under section 110(l), EPA believes it is appropriate to allow states to substitute equivalent emissions reductions to compensate for any potential emission increases caused by a change to a SIP-approved program, so long as net actual emissions to the air do not increase. “Equivalent” emission reductions mean reductions which are equal to or greater than those reductions achieved by the control measure approved in the SIP, which in this case is 7.8 psi RVP gasoline. To show that compensating emission reductions are equivalent, modeling or adequate justification must be provided. The compensating, equivalent or greater reductions must represent real, new emissions reductions achieved in a contemporaneous time frame to the change of the existing SIP control measure, in order to preserve the status quo level of emissions in the air. In addition to being contemporaneous, the equivalent emissions reductions must also be permanent, enforceable, quantifiable, and surplus to be approved into the SIP.

In its May 2, 2018 SIP revision, PA DEP submitted a section 110(l) demonstration that relies upon emission reductions from another emission control measure (and a permanently shutdown stationary source) to fully offset any potential increase in emissions that would otherwise result from removal of the SIP approved 7.8 psi RVP summertime gasoline requirement in the Pittsburgh-Beaver Valley Area. Specifically, PA DEP demonstrated that emission reductions in

the Pittsburgh-Beaver Valley Area from the 7.8 psi RVP program are fully offset by: 1) Reductions from an adopted, implemented Pennsylvania regulation relating to the use and application of adhesives, sealants, primers, and solvents at 25 Pa. Code Section 129.77 and 2) the permanent shutdown of a facility in the Pittsburgh-Beaver Valley Area. The substitute emissions reduction measures were demonstrated to be quantifiable, permanent, surplus, enforceable, and contemporaneous (i.e. occurring at approximately the same time as cessation of the low-RVP fuel program). Upon removal of the state 7.8 psi summertime RVP program, the Federal 9.0 psi RVP limit becomes the applicable fuel volatility control program in the Area.

EPA approved the Commonwealth's CAA 110(l) noninterference demonstration supporting removal of the 7.8 psi RVP gasoline program in the Pittsburgh-Beaver Valley Area on December 20, 2018 (83 FR 65301). The PA DEP's 7.8 psi RVP control program for the entire Pittsburgh-Beaver Valley Area (under Pa Code Chapter 126) is similar in legal substance to that of Allegheny County's 7.8 psi RVP program (under Article XXI of the County's Rules and Regulations). Because of the similarity of the two programs, the March 19, 2019 SIP revision requesting removal of ACHD's 7.8 psi RVP program from the SIP relies upon the Commonwealth's prior approved noninterference demonstration to show that removal of the ACHD program will not interfere with attainment (or other CAA applicable requirements) of any NAAQS in the Pittsburgh-Beaver Valley Area. The March 19, 2018 SIP revision contains a copy of the PA DEP's earlier demonstration, for reference, without changing the substance of that prior demonstration. Because of the similarity between the ACHD county low-RVP rule and the areawide PA DEP low-RVP rule, EPA agrees with this approach to demonstrating that removal of ACHD's 7.8 psi RVP program for Allegheny County will not require additional evaluation for CAA 110(l) noninterference beyond the showing made by PA DEP for the 7.8. psi

RVP program suspension in the Pittsburgh-Beaver Valley Area.

## **V. Impacts on the Boutique Fuels List**

Section 1541(b) of the Energy Policy Act of 2005 required EPA, in consultation with the U.S. Department of Energy, to determine the number of fuels programs approved into all SIPs as of September 1, 2004 and to publish a list of such fuels. On December 28, 2006 (71 FR 78192), EPA published the list of boutique fuels, as it existed at that time. EPA maintains the current list of boutique fuels on its web site at: <https://www.epa.gov/gasoline-standards/state-fuels>. The final list of boutique fuels was based on a fuel type approach. CAA section 211(c)(4)(C)(v)(III) requires that EPA remove a fuel from the published list if it is either identical to a Federal fuel or is removed from the SIP in which it is approved. Under the adopted fuel type approach, EPA interpreted this requirement to mean that a fuel would have to be removed from all SIPs in which it was approved prior to being removed from the list (71 FR 78195).

The 7.8 psi RVP fuel program (as required by Allegheny County Article XXI), as approved into Pennsylvania's SIP, is a fuel type that is included in EPA's boutique fuel list, as shown in a state-by-state listing of boutique fuels (71 FR 78198-99). The list of states and areas where federal 7.8 psi and 9.0 psi low-RVP gasoline are currently required can also be referenced on EPA's Gasoline Reid Vapor Pressure web page (<https://www.epa.gov/gasoline-standards/gasoline-reid-vapor-pressure>). On that list, Allegheny County, Pennsylvania is currently listed as a partial area boutique fuel program for Pittsburgh, Pennsylvania. Subsequent to the final effective date of EPA's approval of Pennsylvania's March 19, 2019 SIP revision to remove Allegheny County's Rules and Regulations, Article XXI RVP requirement from the SIP, EPA will update the State Fuels and Gasoline Reid Vapor Pressure web pages with the effective date of the SIP removal. After the effective date of the final action on the March 19, 2019 SIP revision, EPA will remove



the 7.8 psi RVP fuel type for Pennsylvania from the list of boutique fuels.

## **VI. What Action is EPA taking?**

EPA has reviewed Pennsylvania's March 19, 2019 SIP revision requesting removal of the Allegheny County low-RVP rule and related requirements from the Pennsylvania SIP. EPA is proposing to approve Pennsylvania's March 19, 2019 SIP revision request to remove gasoline RVP-related provisions of Article XXI of the ACHD's Rules and Regulations from the Allegheny County portion of the Commonwealth's SIP -- including Part E, Subpart 9, section 2105.90 (related to gasoline volatility) and Part G, section 2107.15 (related to test methods for gasoline RVP).

EPA is proposing to remove Allegheny County's 7.8 psi RVP requirements from the approved SIP, as codified at 40 CFR §52.2020(c)(2). This proposed removal from the approved Pennsylvania SIP is supported by a CAA noninterference demonstration prepared by PA DEP in support of the May 2018 SIP revision that requested removal of the Commonwealth's 7.8 psi RVP program in the larger Pittsburgh-Beaver Valley Area -- the removal of which EPA approved in the final rule published December 20, 2018 (83 FR 65301). In the March 19, 2019 SIP revision submitted by PA DEP on behalf of ACHD, ACHD references this demonstration, which analyzes the suspension of 7.8 psi gasoline for the entire Pittsburgh-Beaver Valley Area, including Allegheny County. With this action, EPA is also proposing to approve the Commonwealth's use of the previously approved CAA 110(l) demonstration from its May 2, 2018 submission to demonstrate that removal of the Allegheny County low-RVP gasoline program does not interfere with the Commonwealth's ability to attain or maintain any NAAQS in the Pittsburgh-Beaver Valley Area. Our approval of the May 2, 2018 SIP submittal is in accordance with requirements for SIP actions under CAA section 110.

EPA is soliciting public comments on the issues discussed in this document. Since EPA already approved the Commonwealth's technical demonstration considering the emissions impact of the removal of 7.8 psi RVP programs from the Pittsburgh-Beaver Valley Area (as part of its December 2018 approval of Pennsylvania's request to remove the PA DEP RVP requirements in the same area), EPA is not soliciting public comment on the technical merits of that approved demonstration. Any comments received will be considered by the Agency before EPA takes final action.

## **VII. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule to approve Pennsylvania's request to remove ACHD's gasoline volatility regulatory requirements from the Pennsylvania SIP does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, and Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: April 12, 2019

Cosmo Servidio.

Regional Administrator,

Region III.

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